

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 MANUEL FELIX, JR.,) Case No. CV 11-7713-JHN (RNB)
12 Petitioner,)
13 vs.) ORDER TO SHOW CAUSE
14 MATTHEW CATE, Secretary,)
15 Respondent.)
16

17 On September 16, 2011, petitioner (through counsel) filed a Petition for Writ
18 of Habeas Corpus by a Person in State Custody herein. However, it appeared from
19 the face of the Petition that petitioner had not exhausted his state remedies with
20 respect to three of his four grounds for relief. Specifically, it appeared that Grounds
21 Two through Four had been presented for the first time in a habeas petition to the
22 California Supreme Court that still remained pending. Therefore, petitioner's
23 inclusion of Grounds Two through Four in the Petition rendered the Petition a "mixed
24 petition" containing both exhausted and unexhausted claims that was subject to
25 dismissal under the total exhaustion rule of Rose v. Lundy, 455 U.S. 509, 518-22, 102
26 S. Ct. 1198, 71 L. Ed. 2d 379 (1982) unless petitioner could make the requisite
27 showing for stay-and-abeyance under Rhines v. Weber, 544 U.S. 269, 277-78, 125
28

1 S. Ct. 1528, 161 L. Ed. 2d 440 (2005).¹

2 Accordingly, on September 22, 2011, the Court issued an Order requiring
3 petitioner to either (a) file a formal stay-and-abeyance motion if he believed he can
4 make the requisite showings; or (b) show cause in writing, if any he had, why the
5 Court should not recommend that this action be dismissed without prejudice for
6 failure to exhaust state remedies.

7 In response to the foregoing Order, petitioner has now filed a document
8 captioned “Motion for Stay and Abeyance of Mixed Habeas Petition and/or Other
9 Appropriate Relief.” Prior to ruling on petitioner’s stay-and-abeyance motion, the
10 Court has decided to afford respondent the opportunity to be heard in response.

11 It therefore is hereby ORDERED as follows:

12 1. The Clerk of this Court shall promptly (a) serve copies of
13 the Petition (including all attachments), the Court’s September 22, 2011
14 Order to Show Cause, petitioner’s stay-and-abeyance motion, and this
15 Order on respondent and the Attorney General for the State of
16 California, or her authorized agent; and (b) serve a copy of this Order on
17 petitioner.

18 2. Within fourteen (14) days of the service of this Order,
19 respondent shall e-file and serve a Notice of Appearance that designates
20 the Deputy Attorney General(s) in charge of the case.

21 3. Within twenty-eight (28) days of the service of this Order,
22 respondent shall serve and file either opposition or a statement of non-
23 opposition to petitioner’s stay-and-abeyance motion.

24
25 ¹ Although petitioner had requested in the “Conclusion” section of the
26 Petition that the Court “stay its action on this petition with [sic] such time as the
27 California Supreme Court has taken final action on the federal claims raised by the
28 state habeas petition,” he had not even purported to make the three necessary
showings under Rhines.

1 4. If respondent files opposition to his stay-and-abeyance
2 request, then petitioner shall serve and file his reply (if any) thereto
3 within twenty-eight (28) days of service of the opposition. If respondent
4 files a statement of non-opposition, the Court will issue another Order
5 re Further Proceedings.

6
7 DATED: October 13, 2011

A handwritten signature in dark ink, appearing to read "Robert N. Block", is written over a light gray rectangular background.

8
9
10 ROBERT N. BLOCK
 UNITED STATES MAGISTRATE JUDGE